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7 UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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10 CATHOLIC SOCIAL SERVICES,  
11 INC., - IMMIGRATION PROGRAM,  
12 et al.,

NO. CIV.S-86-1343 LKK/JFM

13 Plaintiffs,

14 v.

O R D E R

15 MICHAEL CHERTOFF, SECRETARY  
16 U.S. DEPARTMENT OF HOMELAND  
17 SECURITY, et al.,

18 Defendants.  
19 \_\_\_\_\_/

20 This case concerns the Immigration and Naturalization  
21 Services' improper decision to turn away certain applicants for  
22 legalization during a one-year period from 1987 to 1988. The court  
23 approved the parties' settlement on January 23, 2004. The  
24 settlement included reference to a special master for  
25 administration of certain elements of the settlement. Pending  
26 before the court is a filing by an individual contending he is a  
member of the plaintiff class, in which he objects to the special  
master's determination to the contrary. The court resolves these

1 objection on the papers, and with the assistance of briefing  
2 submitted by the defendants and the class representatives.

3 **I. BACKGROUND**

4 Under the 1986 Immigration Reform and Control Act, certain  
5 aliens could apply for temporary resident status if, *inter alia*,  
6 they had resided continuously in the United States since 1982, they  
7 were physically present in the United States continuously since  
8 November 6, 1986, and they had applied for temporary resident  
9 status between May 5, 1987 and May 4, 1988. Reno v. Catholic Soc.  
10 Servs., 509 U.S. 43 (1993). Regarding the continuous physical  
11 presence requirement, the court held in 1988 that this requirement  
12 was met for those applicants who had "brief, casual, and innocent"  
13 absences from the country without prior INS approval. Id. After a  
14 series of appeals and remands, the parties entered a settlement  
15 that was approved in January 2004.

16 The settlement defined the plaintiff class entitled to relief  
17 as:

18 A. All persons who were otherwise prima facie eligible  
19 for legalization under section 245A of the INA and who  
20 tendered completed applications for legalization under  
21 section 254A of the INA and fees to an INS officer or  
22 agent acting on behalf of the INS, including a QDE,  
23 during the period from May 5, 1987 to May 4, 1988, and  
24 whose applications were rejected for filing because an  
25 INS officer or QDE concluded that they had traveled  
26 outside the United States after November 6, 1986 without  
advance parole.

23 B. All persons who filed for class membership under  
24 Catholic Social Services, Inc. v. Reno, CIV No. S-86-  
25 1343 LKK (E.D. Cal.), and who were otherwise prima facie  
26 eligible for legalization under Section 245A of the INA,  
who, because and INS officer or QDE concluded that they  
had traveled outside the United States after November 6,  
1986 without advance parole were informed that they were

ineligible for legalization, or were refused by the INS or its QDEs legalization forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to timely file or complete a written application.

Joint Motion to Approve Settlement of Class Action, Dec. 1, 2003, Ex. 1 ("Settlement") ¶ 1. The settlement set forth a process for determination of whether an individual was a member of the plaintiff class. The individual is to submit an application for class membership and application for status as a temporary resident, with supporting documentation, to the defendants. Id. ¶ 4. The defendants grant class membership applications if "it appears more probable than not that the applicant meets the class definition." Id. ¶ 6. Prior to denying an application, the defendants must forward to the applicant or his or her representative "a notice of intended denial explaining the perceived deficiency in" the application. Id. ¶ 7. The applicant then has thirty days to submit additional evidence or otherwise remedy the deficiency. Id.

If, after this, the application denied, the defendants must send a copy of the notice of denial to the applicant, his or her attorney, and class counsel. Id. ¶ 8. The applicant may appeal the denial to a special master. Id. ¶¶ 8-9.

The special master is a person selected by both parties.<sup>1</sup> Id.

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<sup>1</sup>Although the court recommended Magistrate Judge Moulds as the special master, this was replaced with the parties' agreement to a third-party special master as described in the settlement agreement. See Order, April 2, 2003 at 2; Settlement ¶ 9.

1 ¶ 9.A. The purpose of the special master selected by the parties  
2 is to review decisions of denials of class membership and other of  
3 defendants' decisions. Id. ¶ 9.A-B. The settlement sets forth that  
4 the special master's review of the denial of an application for  
5 class membership shall be based on the documentary evidence the  
6 applicant provided to the defendants. Id. ¶ 9.B. It also describes  
7 the allocation of the special master's fees. Id.

8 The settlement agreement also specifies the role of the court.  
9 It states,

10 18. Continuing Jurisdiction.

11 The parties agree that notwithstanding the filing and  
12 granting of any motion pursuant to paragraph 17 [motion  
13 for dismissal of all claims upon approval of the  
14 settlement], the district court will retain jurisdiction  
15 over only the matters described immediately below.

16 A. Claims by plaintiffs that the Defendants have engaged  
17 in a pattern and practice of refusing to implement any  
18 of the relief set forth in this Agreement.

19 B. Claims by plaintiffs that the Defendants have  
20 expressly repudiated this Agreement. . . .

21 Id. ¶ 18.

22 On July 28, 2008, Carlos Mendoza filed objections to the  
23 special master's determination that he is not a member of the  
24 plaintiff class. His objections principally rest on his contention  
25 that the special master erred in her review of the evidence.  
26 Defendants and class counsel filed briefs on August 27, 2008 and  
September 16, 2008, respectively, addressing the issue of whether  
the court has jurisdiction to review the special master's denial  
of class membership.

**II. ANALYSIS**

The threshold issue implicit in the resolution of Mr.

1 Mendoza's objections is whether the court has the authority to  
2 review the special master's decisions in the manner that Mr.  
3 Mendoza seeks. The court concludes that it does, but that Mr.  
4 Mendoza's objections are not well-taken.

5 As the class representatives state, the court, notwithstanding  
6 the settlement agreement, necessarily retains jurisdiction over the  
7 adjudication of class membership applications through the court's  
8 Article III powers. The court's use of a special master to assist  
9 in the resolution of a case is limited by Article III, which  
10 requires that federal judges be the ones to exercise judicial power  
11 over the cases before them. See LaBuy v. Howes Leather Co., 352  
12 U.S. 249 (1957). Litigants, however, may waive their right to  
13 dispute resolution by an Article III judge. Peretz v. United  
14 States, 501 U.S. 923, 936-37 (1991); Pacemaker Diagnostic Clinic  
15 of America, Inc. v. Instromedix, Inc., 725 F.2d 537, 542 (9th Cir.  
16 1984). The inverse is also true, in that a waiver of rights by the  
17 class representative cannot be binding on an individual's  
18 application to be part of the plaintiff class. See Order, Jan. 15,  
19 2003 at 2 ("Clearly, the question of class membership is ultimately  
20 for this court . . . . however, it is apparent that there must be  
21 some mechanism in place to deal with the potentially large number  
22 of requests for judicial review of class membership."); see also  
23 Order, April 2, 2003 at 2-3 (contemplating that settlement would  
24 include review by the court of the special master's denial or  
25 revocation of applications for class membership). To hold that an  
26 applicant for class membership waived, by virtue of the settlement,

1 his right to judicial review of the denial of his application would  
2 offend due process, as well as defy logic. See Boykin v. Alabama,  
3 395 U.S. 238, 242-43 (1969) (waiver of a Constitutional right must  
4 be knowing and voluntary). Consequently, despite the express  
5 limitations on the court's jurisdiction stated in the settlement  
6 agreement, the court also retains jurisdiction over the resolution  
7 of appeals from denial of applications for class membership.

8       It remains to determine the standard of review employed in  
9 reviewing the special master's decisions. Federal Rule of Civil  
10 Procedure 53, which governs appointments of special masters,  
11 provides that all objections to the special master's findings of  
12 fact shall be reviewed de novo unless the parties stipulate, with  
13 the court's approval, that the findings will only be reviewed for  
14 clear error or the findings of the master will be final. Fed. R.  
15 Civ. P. 53(f). Although the special master here was not appointed  
16 pursuant to Rule 53 but by stipulation of the parties, that  
17 standard of review remains appropriate, especially since the  
18 special master is charged with determining questions that directly  
19 bear on an applicant's right to relief. Accordingly, objections to  
20 the special master's denial of an application for membership to the  
21 plaintiff class will result in the special master's decision being  
22 reviewed de novo.

23       Turning then to Mr. Mendoza's objections, the court concludes  
24 that the special master did not err. As the special master  
25 observed, the evidence tendered is equivocal as to whether Mr.  
26 Mendoza applied for legalization between May 5, 1987 and May 4,


1 1988. It is also equivocal as to whether he attempted to apply for  
2 legalization during this time, but was turned away by an agent of  
3 the INS or QDE. These discrepancies in the evidence lead the court  
4 to conclude that it does not appear more probable than not that Mr.  
5 Mendoza meets the class definition.

6 **III. CONCLUSION**

7 Accordingly, Mr. Mendoza's objections to the special master's  
8 decisions are OVERRULED.

9 IT IS SO ORDERED.

10 DATED: November 12, 2008.

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13 LAWRENCE K. KARLTON  
14 SENIOR JUDGE  
15 UNITED STATES DISTRICT COURT  
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